

Not found in Wing

Copy of a Letter from the Lords  
of Session to King Cha. and  
of King Ja. his Majesties An-  
swear to them, anent two prizes  
called the *Palm-Tree* and *Patience*.

13.

May it please Your most Sacred Majesty,

**W**E Received Your Majesties Letter dated the fourth day of August last, concerning the two Danish Ships called the *Palm-Tree* and *Patience*; which being Intimat to the Parties concerned in that Process, and the Cause fully Debate. Upon Advising thereof, the following Doubts did arise; Whether or not the want of Passes conform to the Formula appointed by the 20 Article of Your Majesties Treaty with the King of Denmark, is sufficient alone to Confiscate the Ships and Goods; albeit it be thereafter proved, that they belonged to the Subjects of Your Majesties Allies. In the next place, if the Freight-brief (whereof a duplicate is herewith sent signed by the Clerk of that Process) containing the different Ports of London and Holland, as a double Document, and sufficient alone to Confiscate the Ship and Goods, albeit it be thereafter proved that the Property belonged to Your Majesties Allies. And in the third place, if the said Freight-brief being concealed at Sea the time of the Capture, and thereafter Exhibit to the Judge at the Trial by the Reclaimers; If that be a concealed Document and sufficient alone to Confiscate the Ship and Goods, albeit it be thereafter proved, they belonged to Your Majesties Allies. And considering that the Laws of Nations are and may be Regular by Your Treaties with Foreign Princes. Whereof and of Your own Instructions, Your Majesty being the best Interpreter: We thought it our Duty humbly to offer to Your Majesties consideration, the Cases abovementioned; That You may declare Your Royal Pleasure and Opinion concerning the same; which in the Decision of this and other Processes of the like Nature, shall be exactly observed. By

Your most Faithful, most Obedient,

And most Humble Subjects

and Servants.

Edinb. 27 Jan.

1684.

Copy



# Copy of His Majesties Letter To the Lords of Session, anent the Palm-Tree and Patience.

JAMES R.

**R**IGHT Trustee, and Right well Beloved Cusins and Councillors, Right Trustee and well Beloved Councillors, and Trustee and well Beloved, We Greer you Well: Whereas by your Letter of the 28th day of January last past to Our most dear and most entirely Beloved Brother lately deceased, you have Remitted the Queries therein contained, touching the Process relating to the Patience and Palm-Tree, to be determined; Separately for your greater Clearness, and altho We find the same Queries jointly Remitted to his said late Majesty, in the Year 1680 and 1684, Clearly and Positively already Determined; Yet We being most desirous to have these tedious and troublesome Processes put to an end, have Separately Resolved the same as they are now stated by you, viz. First whether or not the want of Passes conform to the Formula appointed by the Twentieth Article of the Treaty with the King of Denmark is sufficient alone to Confiscate the Ships and Goods, albeit it be thereafter proved that they belonged to the Subjects of Our Allies. Secondly, If the Fraught-brief according to the Duplicat sent hither is a double Document, and sufficient alone to Confiscate the Ships and Goods, albeit it be thereafter proved that the Property belonged to Our Allies. And Thirdly, If the said Fraught Breiff being Concealed at Sea the time of the Capture, and thereafter Exhibited to the Judge at the Tryal by the Reclaimers is that be a concealed Document, and sufficient alone to Confiscate the Ships and Goods, albeit it be thereafter proved that they belonged to Our Allies. As to the first, The want of a Pass conform to the Formula, is not of it self a sufficient Ground of Confiscation, but a good Ground of Seizure, and bringing the Ship up in order to an Examination, whereupon if it be proved it belonged to an Allies, the Captor is to be allowed his Costs and Damages.

As to the second, The Fraught Breiff is equal to a Double Document, because it bears double Ports of London and Holland, then in open Hostility, and cannot be otherways understood; than if there were a separat Fraught Breiff for each of the two Ports, and is a sufficient Ground alone to Confiscate both Ships and Goods, according to the third Article of the Instructions to our Admiralty, and the said Letter in the year 1680, and Admits of no Probation to the contrary. And as to the third and last Querie, We find the Concealing at Sea, the time of the Capture, of any Document, is sufficient alone to Confiscate both Ships and Goods, and Admits of no Probation thereafter to the contrary. And now upon the whole matter, We do find that the said Two Ships and Goods, were in Our High Court of Admiralty there, upon the foresaid Grounds and Reasons, Justly Condemned to be Good and Lawful Prizes, as wanting Passes conform to the Formula, and having no Pass at all for that Voyage; as also having double and Concealed Documents, which jointly are Unquestionable of such Force by the constant practick of our High Court of Admiralty here, the Law of Nations, and the said two Letters Explanatory as ought to have Excluded all Probation to the contrary. Therefore it is our Express Will and Pleasure, and we do hereby Ordain and Require you notwithstanding of any former Probation to the contrary) to give your final Sentence and Determination in that Process, upon the Grounds and Reasons abovementioned, without any further delay; And to Record these presents in your Books, to be a rule for the future in the like Cases, for both which this shall be your Warrant: And so we bid you Heartily farewell.

The Principle given up to Mr. Roderick M'keinzie Clerk, to lye as the Warrant for Extracting the Decreet.

Given at our Court at Whitehal, the 28th day of February 1684, and of our Reign the first year. By His Majesty's Command, Sic subscribitur.

Drummond.

44/364